

MODEL SALE OF TOBACCO PRODUCTS TO MINORS CONTROL ACT

SECTION 1. SHORT TITLE.

This Act may be cited as the "Sale of Tobacco Products to Minors Control Act".

SEC. 2. FINDINGS.

The Legislature finds that--

(1) approximately 390,000 Americans die each year of diseases caused by cigarette smoking,

(2) the Surgeon General of the Public Health Service has determined that smoking is the leading cause of preventable death in this country,

(3) nicotine in tobacco has been found by the 1988 report of the Surgeon General, The Health Consequences of Smoking: Nicotine Addiction, to be a powerfully addictive drug, and it is therefore important to prevent young people from using nicotine until they are mature and capable of making an informed and rational decision,

(4) most adults who smoke wish to quit, a majority of current adult smokers have tried to quit without success, and one-half of all teenagers who have been smoking for five years or more have made at least one serious but unsuccessful attempt to quit,

(5) every day more than 3,000 minors begin smoking,

(6) one-half of smokers begin before the age of 18, and 90 percent begin before the age of 21, and

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(7) minors spend more than one billion dollars on cigarettes and other tobacco products every year.

SEC. 3. OFFICE OF TOBACCO CONTROL.

(a) Establishment of Office.--There is established in the Department of _____ an Office of Tobacco Control. The Office shall be headed by a Director.

(b) Functions of Director.--The Director shall--

- (1) issue licenses for the sale of tobacco products,
- (2) provide without charge signs (concerning the prohibition on sales to individuals under 19 years of age) that meet the requirements of subsection (d) to persons licensed to sell tobacco products,
- (3) investigate (concurrently with other State and local officials) violations of sections 4 through 6,
- (4) enforce civil money penalties under section 7,
- (5) enforce (concurrently with other State and local officials) fines under section 7, and
- (6) bring license suspension, revocation and nonrenewal actions under section 8.

(c) Licenses.--

(1) A license for the sale of tobacco products shall be issued to a specific person for a specific outlet (a fixed location or mobile unit) and shall be valid for a period of one year.

(2) The annual fee for a license is \$50 for an outlet whose annual volume of tobacco sales is less than \$5000, and

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\$300 for an outlet whose annual volume of tobacco sales is 75000 or more.

(d) Signs Concerning Sales to Individuals Under Age 19.--
Signs to be provided under subsection (b)(2) shall--

(1) contain in red lettering at least one-half inch high on a white background: "IT IS A VIOLATION OF THE LAW FOR CIGARETTES OR OTHER TOBACCO PRODUCTS TO BE SOLD TO ANY PERSON UNDER THE AGE OF 19", and

(2) include a depiction of a pack of cigarettes at least two inches high defaced by a red diagonal diameter of a surrounding red circle.

SEC. 4. DISPLAY OF LICENSE AND SIGNS.

A person that holds a license issued under section 3(b)(1) shall--

(1) display the license (or a copy) prominently at the outlet for which the license is issued, and

(2) display prominently at each place at that outlet at which tobacco products are sold a sign that meets the requirements of section 3(d).

SEC. 5. PROHIBITIONS APPLICABLE TO LICENSE HOLDERS AND THEIR EMPLOYEES AND AGENTS.

(a) Prohibition on Sale or Distribution to Individuals Under the Age of 19 and in Certain Other Cases.--A person that holds a license issued under section 3(b)(1), or an employee or agent of that person, may not sell or distribute a tobacco product--

(1) to any individual that the license holder, employee, or agent knows is under 19 years of age,

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(2) to any individual (other than an individual who appears without reasonable doubt to be over 19 years of age) who does not present a driver's license (or other generally accepted means of identification) that describes the individual as 19 years of age or older, contains a likeness of the individual, and appears on its face to be valid,

(3) in any form other than an original factory-wrapped package, or

(4) other than at an outlet for which a license has been issued under section 3(b)(1).

(b) Prohibition on Maintaining Vending Machines.--A person that holds a license issued under section 3(b)(1), or an employee or agent of that person, may not maintain at a licensed outlet any device that automatically dispenses tobacco products.

(c) No More Than One Violation on Any One Day.--No person shall be liable under the preceding subsections for more than one violation on any one day.

SEC. 6. PROHIBITION ON UNLICENSED SALE OR DISTRIBUTION OF TOBACCO PRODUCTS.

(a) General Rule.--No person, other than a person who holds a license issued under section 3(b)(1), or an employee or agent of that person, may sell or distribute a tobacco product.

(b) Exceptions.--Subsection (a) does not apply to--

(1) distribution by an individual to family members or acquaintances on private property that is not open to the public, or

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(2) the sale or distribution to a manufacturer of tobacco products, to a wholesaler of tobacco products, or to a person who holds a license issued under section 3(b)(1).

SEC. 7. PENALTIES.

(a) Nature and Size of Penalties.--

(1) Any license holder that violates a requirement of section 4 shall be subject to a fine or civil money penalty of not more than \$100.

(2) Any license holder, employee, or agent that violates a prohibition of section 5 shall each be subject to--

(A) a fine or civil money penalty of \$100, for the first violation within a two year period,

(B) a fine or civil money penalty of \$250, for the second violation within a two year period,

(C) a fine or civil money penalty of \$500, for the third violation within a two year period, or

(D) a fine or civil money penalty of \$1000, for any additional violation within a two year period.

(3) Any person that violates a prohibition of section 6 shall be subject to a fine of not more than \$1000, or imprisonment of not more than 30 days, or both.

(b) Exception for License Holder.--A person that holds a license issued under section 3(b)(1) shall not be subject to a fine or civil money penalty under subsection (a)(2) for a violation by an employee or agent of a prohibition under section 5, and an assessment of a fine or civil money penalty under

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subsection (a)(2) for a violation by an employee or agent shall be disregarded for purposes of section 8(a), if the license holder affirmatively demonstrates that the license holder has an effective system in place to prevent violations of the prohibitions under section 5. The exception prescribed by the preceding sentence applies only once to a license holder during any two year period.

(c) No Double Penalty.--

(1) If an action has been commenced against a person under subsection (a)(1) or (a)(2) for a particular violation for the payment of a fine, no action may be commenced against that person for that violation for the payment of a civil money penalty.

(2) If an action has been commenced against a person under subsection (a)(1) or (a)(2) for a particular violation for the payment of a civil money penalty, no action may be commenced against that person for that violation for the payment of a fine.

(d) Notification to Office of Tobacco Control of Fines Imposed.--A court shall notify the Director of the Office of Tobacco Control of any fine imposed under subsection (a)(2).
SEC. 8. SUSPENSION, REVOCATION, AND NONRENEWAL OF LICENSES.

(a) Suspension, Revocation, and Nonrenewal of Individual Licenses.--A license issued under section 3(b)(1) for a particular outlet shall be suspended or revoked, and not renewed, for a period of--

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(1) 7 days, if a fine or civil money penalty has been imposed under section 7(a)(2) for the second violation at that outlet within two years,

(2) 1 to 6 months, if a fine or civil money penalty has been imposed under section 7(a)(2) for the third violation at that outlet within two years, or

(3) 9 to 18 months, if a fine or civil money penalty has been imposed under section 7(a)(2) for any additional violation at that outlet within two years.

(b) Suspension, Revocation, and Nonrenewal of All Licenses for Outlets Under Common Ownership or Control.--All licenses issued under section 3(b)(1) for outlets that are under common ownership or control shall be suspended or revoked, and not renewed, for a period of 9 to 18 months, if fines or civil money penalties have been assessed under section 7(a)(2) for three or more violations at three or more outlets within a two year period.

(c) No Double Counting.--A violation committed by an employee or agent, and attributed to a license holder, shall be counted only once for purposes of the preceding subsections.

(d) Exception.--See section 7(b).

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